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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,815	12/20/2000	Howard W. Fingerhut	BS00-192	4042
7590 11/10/2004				
WITHERS & KEYS, LLC P.O. BOX 71355 MARIETTA, GA 30007-1355			EXAMINER PALADINI, ALBERT WILLIAM	
			ART UNIT 2125	PAPER NUMBER

DATE MAILED: 11/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/739,815

Applicant(s)

FINGERHUT ET AL.

Examiner

Albert W Paladini

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2125

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 5/15/01.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 1-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Richetta (5499237).

In figure 7 Richetta discloses an apparatus and method for routing data packets that takes into account actual or historical traffic demand. Also provided is a method and apparatus that prevents link overloads taking into account link capacity and actual traffic. Also provided are an apparatus and method for routing data packets that is responsive to changes in system traffic. He teaches a method of simulating packet traffic by obtaining routing tables in step 102, simulating the traffic routing in step 107, and modifying the topology in step 116. Richetta does not explicitly use the phraseology "traffic logs" as recited in claims 1, 12, and 21; but it would have been obvious to one of ordinary skill in the art that the routing table contains "traffic logs," and that they are indexed so as to identify and recall them. Richetta does not also discuss generating a "histogram file" as recited in claims 1, 12, and 21.

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However, on lines 40-54 in column 1, Richetta states "Typically, it is advantageous for the network to attempt to select the shortest possible path to minimize delay, to consume a minimal amount of network resources, and to maximize reliability in delivering communications, information flow, or other service. At the same time, actions within the network need to balance the constraints of the delay, resource consumption, and reliability with the need to prevent overloading any of the network nodes or communication links, while maintaining delivery of the network traffic. Delivery of network traffic to its intended destination is desirably made with proper allowances for statistical variations in traffic and an ability for the network to absorb instantaneous changes in requested service without having to react to the volume of traffic by devising new routing instructions." It would have been obvious to one of ordinary skill in the art that a histogram representing the traffic distribution different times would allow one to estimate the statistical variations in traffic.

### ***Relevant Prior Art***

Datta (6209033) discloses a method and apparatus for evaluating network traffic where network capacity evaluation and planning (CEP) is performed based upon the traffic across the links of the network. Once a link's traffic volume has been measured, it is compared with the link's traffic capability, and the resulting parameters may be compared with the traffic and capability of other links of the network to create measures of network capacity and balance. Then, substituting simulated traffic volume amounts may make simulated changes to the network configuration and capabilities for selected link traffic measurements and capabilities, and the resulting determinations of network capacity and balance may then be compared to determine whether the simulated changes represent a preferred network configuration.

Saito (6563796) discloses a method and system for evaluating network traffic which involves a simulation where a logic to simulate a target system is assembled into a computer. The computer is then input with statistically processed results obtained from traffic measurement in the actual network system, and traffic based on the results of processing is simulated by generating random numbers, and the resulting quality for the generated traffic is evaluated. It also includes a second method based on evaluating a mathematical relationship between quality and operating environment such as traffic buffer size obtained by traffic theory. Traffic conditions are derived from statistical processing of traffic measurement in the information network system, as in the first method, or the person evaluating the system selects suitable traffic conditions under certain assumptions. In either method, the evaluation approach is based summarizing the measured results once into a small number of statistics, and analyzing the summarized statistics.

Hao (6728214) discloses a method of testing a network router for operation according to a given protocol which includes coupling a router under test (RUT) to a test host device, and configuring the device to simulate a network having at most a given number of router nodes and at most a given number of network nodes with edges connecting the router and the network nodes to one another. The host device sends information packets to and receives information packets from the RUT for each of a number of test network topologies under the

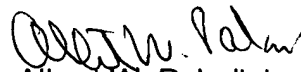
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given protocol. Each test network topology is determined by inserting or deleting an edge or a node to or from a prior test network topology in a probabilistic manner. Operation of the RUT is evaluated with respect to at least one of routing table compilation, packet forwarding, and network topology information accumulated by the RUT. A judgment concerning operation of the RUT under the given protocol is then rendered.

Any inquiry concerning this communication or earlier communication from the examiner should be direct to Albert W. Paladini whose telephone number is (572) 272-3748. The examiner can normally be reached from 7:30 to 3:30 PM on Monday, Tuesday, Thursday, and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Leo P. Picard, can be reached on (572) 272-3749. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

  
Albert W. Paladini  
Primary Examiner  
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